S.B. Civil Writ Petition No.1864/2006
Safi Mohd.
vs
The Addl. Civil Judge (Jr.Div.) No.2 Bhilwara & Anr.

Date of order : 5.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.AK Sharma for Mr.Himanshu Maheshwari, for the petitioner.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 2nd Dec., 2005 by which the plaintiff's application filed under Order 6 Rule 17 CPC was allowed by the trail court.

Learned counsel for the petitioner submitted that the defendant in the written statement in the year 1995 disclosed that he is in possession of the property, still the plaintiff submitted application under Order 6 Rule 17 CPC seeking prayer for possession in the year 2005. It is also submitted that if the amendment is allowed,the plaintiff will have to pay the court fees on value of the suit property on the basis of market value of the property and the trial court would not have any jurisdiction as market value of the property is beyond the pecuniary jurisdiction of the trial court.

I considered the submissions of learned counsel for the petitioner and perused the record also.

Since the petitioner is seeking relief of possession in a suit for injunction on the basis of alleged subsequent event, therefore, he can do so. Whether factually plaintiff's case is right or wrong can be decided only after amendment but due to subsequent event of alleged dispossession of plaintiff from the property in dispute, he cannot be denied amendment in the plaint so as to multiply the litigants only. The objection about pecuniary jurisdiction of the court can be raised only when amendment is allowed then the court may pass appropriate order after hearing both the parties.

In view of the above reason, I do not find any merit in the writ petition and the same is hereby dismissed. The record of the trail court be sent forthwith to the trial court.

(PRAKASH TATIA), J.

c.p.goyal/-